

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
N DIVISION

APPOTRONICS CORPORATION)
LIMITED.)
Plaintiff,)
v.) Civil Action No.:
2:19cv466
DELTA ELECTRONICS, INC.,)
Defendant.)

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

(Hearing on Motion to Transfer Venue)

Norfolk, Virginia
July 13, 2020

BEFORE: THE HONORABLE ROBERT G. DOUMAR
United States District Judge

Appearances: (Via Zoom)

MAYER BROWN, LLC
By: GARY MITCHELL HNATH
By: JING ZHANG
Counsel for Plaintiff

PILLSBURY WINTHROP SHAW & PITTMAN, LLC
By: CHRISTOPHER KAO
BROCK S. WEBER

GOLDSTEIN, EDGAR & REAGAN
By: FRANK ALWIN EDGAR, JR.
Counsel for Defendant

P R O C E E D I N G S

(Proceedings commenced at 10:02 a.m. as follows:)

COURTROOM DEPUTY CLERK: Civil Action No. 2:19cv466,
Appotronics Corporation Limited v. Delta Electronics, Inc.

For the plaintiff, Mr. Hnath, Ms. Zhang, are you ready
to proceed?

MR. HNATH: Yes, we are.

THE COURT: For defendants, Mr. Weber, Mr. Kao, Mr.
Edgar, are you ready to proceed?

MR. HNATH: Yes, we are.

COURTROOM DEPUTY CLERK: Thank you.

THE COURT: Mr. Edgar, are you going to argue it for
Delta? Who is going to be arguing for Delta?

MR. KAO: This is Chris Kao, Your Honor. I'll be
arguing for Delta.

THE COURT: All right, Mr. Kao, go ahead. It's your
motion, isn't it?

MR. KAO: Yes.

THE COURT: Okay.

MR. KAO: Right. Your Honor, we have brought this
motion to transfer venue for the Northern District of
California, and I believe there are two reasons to transfer the
case to the Northern District of California consistent with the

1 case law from the Eastern District of Virginia and the Federal
2 Circuit.

3 First, the plaintiff's choice of venue here should be
4 accorded little to no weight because there's simply, there's no
5 connection between this case and the Eastern District of
6 Virginia. Neither of the parties to this case have any offices
7 in the Eastern District of Virginia, any business in the Eastern
8 District of Virginia. The plaintiff is a company based in
9 China. The defendants, my client, Delta Electronics, is based
10 in Taiwan. So none of the parties have any connection to the
11 Eastern District of Virginia.

12 Second, none of the witnesses have any connection to
13 the Eastern District of Virginia or reside in the Eastern
14 District of Virginia. All of the witnesses for Delta
15 Electronics, the defendant, work and live in Taiwan. Most of
16 the defendants -- the plaintiff's witnesses live and work in
17 China. The one witness who is relevant in this case that is
18 located in the United States is actually located in the Northern
19 District of California, and that is the plaintiff's CEO, and he
20 resides in the Northern District of California.

21 THE COURT: What's he got to do with this?

22 MR. KAO: Excuse me?

23 THE COURT: What's he got to do with the patent
24 problem?

25 MR. KAO: So he is the inventor on the Appotronics

1 patent that's at issue in this case. And not only that, he is
2 the purported inventor -- this is an inventorship case. The
3 plaintiff's argue that Mr. Yi Li, who lives in the Northern
4 District of California, that he is the inventor of all of my
5 client's, Delta's, patents. So he's one of the critical if not
6 one of the most important witnesses in the case. And --

7 THE COURT: What's his address?

8 MR. KAO: He is located in Pleasanton, California.

9 THE COURT: Where? Pleasanton? Is there any -- well,
10 he's a resident of Pleasanton. What's his address there?

11 MR. KAO: I don't have his home address. The U.s.
12 Patent Office records just list the city in which you live, and
13 he lists Pleasanton, California. And in fact, he lists not only
14 in the patent in this case, but in every single patent that he's
15 filed with him as an inventor, it lists him as being in
16 Pleasanton, California.

17 THE COURT: So based on the records of the Patent
18 Office, this witness who you say is essential -- so what is this
19 witness going tell us?

20 MR. KAO: Well, presumably he's going to tell us what
21 role he had in the invention of all of the patents at issue in
22 the case, the five patents that the plaintiff has brought to
23 issue and the one patent that my client Delta has brought to
24 issue, and he would have testimony relevant to all six of those
25 patents.

1 THE COURT: So he is an essential witness, you
2 indicate, in this case, and based on that, he's an essential
3 witness for the plaintiff and you want the case transferred why?

4 MR. KAO: Because not only would the case be more
5 convenient for that witness because he's located in the Northern
6 District of California.

7 THE COURT: I think it's very nice of you to want to
8 do something for the plaintiff. Isn't that wonderful? What
9 else do you want to do for the plaintiff?

10 MR. KAO: It's also more convenient for all of the
11 remainder of the witnesses of the case, not just him, but all of
12 the witnesses that are located in either China or Taiwan,
13 respectively.

14 THE COURT: Well, like we're seeing now, Zoom has
15 changed the world. We're on Zoom now. And this is a civil
16 case. There's no reason we can't take testimony by Zoom if it's
17 necessary.

18 Secondly, this is the Eastern District of Virginia,
19 and as you know, unless you tell me that Delta has a registered
20 agent -- where is the registered agent for Delta?

21 MR. KAO: Delta Electronics is based in Taiwan, so
22 there is no registered agent for Delta Electronics in the United
23 States then.

24 THE COURT: Then who can take and receive subpoenas on
25 behalf of Delta in the United States?

1 MR. KAO: So in most cases, what parties do is serve
2 subpoenas and the like on Delta's U.S. subsidiary, which is
3 based in the San Francisco Bay area.

4 THE COURT: So the only way you can get jurisdiction
5 is through a subsidiary; is that correct?

6 MR. KAO: That's one way. The other way in this
7 case --

8 THE COURT: The subsidiary doesn't get the master in,
9 does it? I mean, you can sue a subsidiary and serve a
10 subsidiary and that's service on the master?

11 MR. KAO: Not in all instances, no.

12 THE COURT: Not in any instance in the Fourth Circuit.
13 Corporations are very, very strict in this circuit. Or has
14 been. I don't know. Things are changing rapidly. But in the
15 past they were very strict in trying to pierce the corporate
16 veil, so to speak, if it's a separate corporation that's a
17 separate corporation. In fact, you don't have a registered
18 agent or anyone in the United States, do you?

19 MR. KAO: Correct. That is true.

20 THE COURT: All right. Then the statute says -- where
21 does the statute say if you have a patent claim where it can be
22 brought? Did you look at the statute?

23 MR. KAO: Yes. So in the absence --

24 THE COURT: The statute requires bringing it -- you
25 know, it's one of the most unusual statutes that I think I've

1 ever seen, because it brings you to a particular court. The
2 Eastern District of Virginia. In fact, I don't think there's
3 another statute that I've ever come across that provided
4 jurisdiction in a particular court. Why Congress felt the
5 particular court was appropriate, long ago they thought the
6 District of Columbia was a particular court, then they -- I
7 assume they moved it to the Eastern District of Virginia when
8 the Patent Office moved next door. So that's where we are.

9 In any event, this Court has cases in Alexandria,
10 which is not so far from Dulles. And my guess is it's less
11 problem, if it's necessary, I could hold the court in
12 Alexandria. I've done it many times before. We've held court
13 in Alexandria before, mostly in Alexandria cases. I've even
14 held court in the Eastern Shore of Virginia. All you have to do
15 is issue an order and hold the court there. So the question
16 really boils down to where is the jurisdiction in this case.
17 You're saying the forum non conveniens should overrule the act
18 of Congress, correct.

19 MR. KAO: No, Your Honor, that's not what I'm saying.
20 And I'm sorry that .

21 THE COURT: Well, does Congress say where the
22 jurisdiction is?

23 MR. KAO: No. That's not correct, Your Honor. The
24 statute provides that an action may be brought in the Eastern
25 District of Virginia, it does not require that an inventorship

1 dispute be brought in the Eastern District of Virginia.

2 THE COURT: So you're saying since the statute does
3 not specifically say you have to bring it in the Eastern
4 District of Virginia, where do you bring it? In Taiwan? Is
5 that what you're saying?

6 MR. KAO: No. You would bring it -- you may bring it
7 in the Eastern District of Virginia or you may bring it where
8 there is specific personal jurisdiction over the defendant.

9 THE COURT: Where is the personal jurisdiction?

10 MR. KAO: Well, here, given that all of the
11 activities, all of the events that occurred, to the extent they
12 occurred in the United States --

13 THE COURT: I'm talking about Taiwan. Am I mistaken?
14 So what's --

15 MR. KAO: Yes, Your Honor.

16 THE COURT: So what's in the United States pertaining
17 to these patents?

18 MR. KAO: The inventor that the plaintiff claims is
19 the inventor of the patents was in California, and they claim
20 that he came up with these ideas in California. That's where he
21 resides and that's where he lists on all of the patents.

22 THE COURT: Oh. So one of the inventors is -- I'm
23 assuming he's an inventor -- lives in California, the
24 jurisdiction of this case, you indicate, should be in
25 California, correct?

1 MR. KAO: Correct.

2 THE COURT: Nothing would give me greater pleasure
3 than to send this case to California, believe me. Nothing would
4 give me greater pleasure. But the question is not my pleasure,
5 the question is is there any jurisdiction in California? I
6 couldn't find it. You say, ah, the president or the CEO lives
7 in California therefore we can bring the suit in California. If
8 the janitor lives in California could you bring the suit in
9 California? No.

10 MR. KAO: Sir, I keep losing the sound.

11 THE COURT: I'm sorry. I don't mean for you to --

12 COURTROOM DEPUTY CLERK: It's on your end, Mr. Kao.

13 THE COURT: Have you got --

14 MR. KAO: We have tried -- I can't hear anything.

15 COURTROOM DEPUTY CLERK: It's on the attorney's end,
16 it's not our end. You can disconnect and reconnect.

17 MR. KAO: Okay. Let me do that.

18 COURTROOM DEPUTY CLERK: It's not on our end. We're
19 perfect on our sound here.

20 MR. KAO: Let me try again.

21 THE COURT: He said he can't get the sound. I think
22 it's very important. And we can test that out.

23 COURTROOM DEPUTY CLERK: We'll have him disconnect and
24 reconnect.

25 (Pause in the record.)

1 THE COURT: Okay. Says he couldn't hear the sound,
2 Ms. Baxter, but I could certainly see him on the screen. But I
3 don't see him now.

4 COURTROOM DEPUTY CLERK: Yes, sir. He just came, he's
5 just now coming back in.

6 THE COURT: Can you hear now?

7 MR. KAO: Yes, I can hear now. I've joined by phone.

8 COURTROOM DEPUTY CLERK: Oh, good.

9 THE COURT: Okay. All right, sir. You go ahead. I
10 interrupted you too much. Go ahead, sir.

11 MR. KAO: Sure. So I think getting back to the point
12 that I last heard, there is specific jurisdiction over the
13 defendant Delta in this case because the activities that are at
14 the heart of this case occurred -- to the extent they occurred
15 anywhere in the United States, they occurred in California, not
16 in the Eastern District of Virginia. And that is because the
17 inventor, one of the two inventors that the plaintiff says
18 should be inventors resides and worked in California. And he is
19 listed that way in all of the patents in the case.

20 THE COURT: So --

21 MR. KAO: In addition --

22 THE COURT: -- the other claimed inventor lives where?

23 MR. KAO: He lives in China.

24 THE COURT: Is that in China or Taiwan?

25 MR. KAO: The other claimed inventors that the

1 plaintiffs claim is an inventor is in China.

2 THE COURT: So the one inventor, the only inventor
3 that's in the United States is the one located in California,
4 correct?

5 MR. KAO: That's correct.

6 THE COURT: Well, the question -- we're holding this
7 on Zoom. My question to you is I see California just released
8 100 -- I mean 100 prisoners I believe? Or was it a thousand? I
9 can't remember how many according to the news broadcast. And
10 California has a runaway problem with the pandemic. Does that
11 make any difference to you, or do you --

12 MR. KAO: No, Your Honor. Those are not factors under
13 the law for transfers for convenience. And again --

14 THE COURT: The convenience of the parties should not
15 take into consideration the -- suppose it was under siege in
16 California? Would that make any difference? I don't know.
17 California has some different ideas as to what is right and
18 just, including how bad the police protections are. So the
19 question -- or how good they are. Does that make any
20 difference?

21 MR. KAO: No, Your Honor. That does not make any
22 difference. The question for a motion to transfer --

23 THE COURT: So the question is the situation or the
24 area where the cases is sought to be transferred, whatever the
25 condition of that area is makes no difference, correct?

1 MR. KAO: That's correct, Your Honor.

2 THE COURT: So --

3 MR. KAO: For a motion to transfer --

4 THE COURT: Go ahead.

5 MR. KAO: The issue is where is the location that is
6 most convenient for the parties and witnesses for the trial of
7 the matter. And in this case, I think it is indisputable that
8 for all of the witnesses, particularly the witness in
9 California, but the witnesses in China and in Taiwan, it would
10 be far more convenient for them to have this case proceed in
11 California, which is much closer to them and easily reachable by
12 a direct flight versus the lengthy time it will take them to get
13 to the Eastern District of Virginia. Those are the factors that
14 are important. And consistently courts in the Eastern District
15 of Virginia have transferred cases with this very same fact
16 pattern where there are no facts that are -- no facts and no
17 witnesses that are relevant to the Eastern District of Virginia,
18 but where all of the facts and the witnesses are located closer
19 to the Northern District of California. In the Macronix case
20 which we cite, in the Divergence Tech (phonetic) case that we
21 cite, courts in the Eastern District of Virginia transfer cases
22 to the Northern District of California when those cases involved
23 witnesses from China, Hong Kong, Taiwan, for example, and other
24 witnesses located in California. And that should be -- that is
25 the test, and that should be what's followed here.

1 THE COURT: Interesting point. So the statute which
2 was enacted by Congress should be overridden of course, you say,
3 when you don't have an agent, by the convenience of the
4 defendant in interviewing a witness for the plaintiffs; is that
5 correct?

6 MR. KAO: Again, it's not overriding the statute. The
7 statute allows for inventorship cases to be brought in the
8 Eastern District of Virginia, it doesn't --

9 THE COURT: How many witnesses are there, do you
10 think, Mr. Zhang? Not Mr. Zhang, excuse me. Mr. Kao. How many
11 witnesses in this case?

12 MR. KAO: So at a minimum there will be seven
13 witnesses, but there may be 10 witnesses.

14 THE COURT: And where are these witnesses located?

15 MR. KAO: So of the 10 witnesses that might be
16 relevant, one of them is located in California and the other
17 nine are located either in China or Taiwan.

18 THE COURT: All right. So you're saying that
19 because -- how much longer does it take to fly to California?
20 What part of California do you want to transfer it to?

21 MR. KAO: The Northern District of California, which
22 is the San Francisco area.

23 THE COURT: You mean you want to go to San Francisco?

24 MR. KAO: Yes, Your Honor.

25 THE COURT: When is the last time you walked down the

1 streets in San Francisco?

2 MR. KAO: Just this morning, Your Honor, coming to my
3 office.

4 THE COURT: And were they clear?

5 MR. KAO: Yes.

6 THE COURT: Oh, so there weren't any people lying on
7 the streets in San Francisco anymore? They have cleaned it up?
8 There's no feces or whatever is being reported in our press is
9 not on the streets of San Francisco, it's someplace else?

10 MR. KAO: No, Your Honor. That is not an accurate
11 depiction of San Francisco.

12 THE COURT: The reason I'm very curious is going from
13 one hotel to another, you almost have to take a cab. Just
14 curious about that. Because it's very difficult to walk on the
15 streets in the downtown area, or has been in the past. But I'm
16 not there now. Things may have changed. Some time ago I was
17 there, and as you walk down the streets you're grabbed by
18 people. Literally. That is no longer the case?

19 MR. KAO: I have never been grabbed by a person, Your
20 Honor, in San Francisco, but...

21 THE COURT: Well, I mean, must have been just then. I
22 could be wrong. I shouldn't be introducing that anyhow. It's
23 just that it was an interesting time to go. Maybe things have
24 changed. And I'm sure they must have. So now, anyhow, in
25 essence what you're saying is there's one witness in California,

1 all the remaining witnesses are in Taiwan or China, and the
2 convenience of the parties is to go where the defendant thinks
3 is the best and easiest place to get to. What is the difference
4 in flying from Dulles or from San Francisco to China?

5 MR. KAO: So there are direct flights from China,
6 Taiwan or Hong Kong and Taiwan to San Francisco, which are about
7 10 to 11 hours. I think the flight to Dulles is probably on the
8 order of 14, 15 hours, but then they would need to transfer,
9 obviously, to get to Norfolk from Dulles.

10 THE COURT: Well, I could hold the case in Alexandria.
11 Done it before. That's no great problem. So the Eastern
12 District of Virginia has a wonderful courtroom in Alexandria.
13 Very, very nice courtroom. And I think probably there's a lot
14 of witnesses coming from California and -- actually have to go
15 to court instead of appear by Zoom, which we're doing now, that
16 I probably would transfer it for the convenience of the
17 individuals flying in because it would be much easier. Be
18 nothing but taking a little cab if you thought it was necessary
19 from Dulles there, and it's not far. So I'm not seeing any
20 great problem with relation to anything other than the flying
21 time. So the flying time was roughly about three hours
22 difference. I understand your position. I think that's -- so
23 you say you're going to have to fly or somebody's going to have
24 to fly nine witnesses in -- or eight witnesses, or -- one is in
25 California and the other nine are in China or Taiwan. So I can

1 understand your point. I think it's an excellent point.

2 Let me hear what the plaintiff has to say about the
3 statute that allows them to sue Delta. The only place I could
4 see where they could possibly sue them is in the Eastern
5 District of Virginia. There's no other place in the United
6 States they could sue them. Hope they could sue them in the
7 jurisdiction in Taiwan, maybe China, I'm not sure which. And so
8 I'm having some problems. But let me hear what the plaintiff
9 has to say.

10 MR. HNATH: All right. Good morning, Your Honor.
11 This is Gary Hnath. Can you hear me okay?

12 THE COURT: Yes. Sure.

13 MR. HNATH: Okay. Great. So we sued, we brought this
14 inventorship suit in the only court that we could bring it in,
15 which was the Eastern District of Virginia. And Congress
16 created the ability to bring inventorship cases involving U.S.
17 patents in the court where the Patent Office is located, and
18 that's why we brought it in the Eastern District of Virginia.

19 So in a transfer motion, there are two issues that
20 need to be considered. First of all, could the case originally
21 have been brought in the transferee forum; here, the Northern
22 District of California. And the answer is no. The Northern
23 District of California would have to have jurisdiction over
24 Delta. And in this case, there is no general jurisdiction over
25 Delta. I don't think the parties are -- Delta's not arguing

1 that. That's not an issue. Delta doesn't have any registered
2 agent in California.

3 And as to specific jurisdiction -- and this is laid
4 out in the briefs -- Delta has the burden, and it's their burden
5 of showing that Delta performed an act which purposefully
6 availed itself of the privilege of conducting activities in
7 California, the claim must arise out of the activities, and the
8 exercise of jurisdiction must be reasonable. And here, at most,
9 they're relying on Appotronics' activities, not Delta's
10 activities. There's no evidence in the record presented by
11 Delta that any research took place in the United States. In
12 fact, the record is that all of the relevant activities, the
13 collaboration between Delta and Appotronics and the research
14 took place in China and Taiwan. Dr. Yi had a residence part of
15 the year in California at one time, but he submitted a
16 declaration in which he explains that none of his time in
17 California was related to the Delta project. In fact, he
18 doesn't even have any test equipment or design equipment in
19 California. And to the extent he may have made an occasional,
20 sent an email or made a phone call from California, he never
21 represented to Delta that he was residing part-time in
22 California. There's no evidence that they reached out to him
23 knowing that he was in California. There's no evidence of any
24 inventorship activities in this case that took place in
25 California. The doctor's residence is irrelevant here. It does

1 not establish personal jurisdiction over Delta. And again, the
2 key is that personal jurisdiction has to relate to Delta's
3 activities, not to Appotronics' activities.

4 So if there's no jurisdiction over Delta in
5 California, that is the end of the matter. You don't even get
6 to all of the other transfer factors, the convenience of the
7 parties, the travel and so forth and so on. If you did reach
8 those factors, we think that those factors do not favor
9 transfer. There is a connection to Virginia. This case was
10 brought in Virginia, and it was brought in Virginia because
11 Delta got its patent in the Eastern District of Virginia, and so
12 there is a connection to the forum.

13 We're not arguing -- and it's kind of them to be
14 concerned about Dr. Yi, but he has no problem traveling to the
15 Eastern District of Virginia as the plaintiff, and all of the
16 other witnesses, as has been noted, are in China or Taiwan, and
17 we're talking about a few hours at the most for what would be
18 one trial. Any depositions, the parties have agreed, will take
19 place where the witnesses, proximate to where the witnesses work
20 and live, in China or Taiwan. In the case of China, they need
21 to be taken in Hong Kong because you cannot take depositions in
22 China.

23 So we believe that the motion should be denied, No. 1,
24 because this case, there's no jurisdiction over Delta in
25 California, and so the case could not have been brought in

1 California even if we wanted to in the first place. And second
2 of all, we brought this case in the Eastern District of
3 Virginia, and we believe that the case should stay here.
4 There's no reason to disturb that original choice, and the
5 convenience of the parties is a weak factor and does not
6 override the choice of forum in this case and the connection to
7 this forum, which is where the Patent Office is located.

8 THE COURT: Thank you very much. I'll give you an
9 opportunity to reply about it, Mr. Kao.

10 MR. KAO: Yes. Thank you, Your Honor. The plaintiff
11 is completely misstating the law on motions to transfer. The
12 convenience of the parties and the witnesses is the paramount
13 factor, not an irrelevant factor as Mr. Hnath just mentioned.
14 It is the most important factor. And that is consistent in all
15 of the cases that are cited in the briefing, Your Honor. And in
16 fact, the plaintiff's choice of forum is entitled to little or
17 no weight. And again, that is consistent in all of the cases
18 cited by both parties in this case. And that is because there
19 is simply no connection between the facts of this case and the
20 Eastern District of Virginia. And it is true that the Patent
21 Office is located in the Eastern District of Virginia, but that
22 is not a factor. If that were the case, then every single
23 patent infringement case in the country should be brought in the
24 Eastern District of Virginia, and that's just not the law. So
25 on the law, the plaintiff is wrong on the motion to transfer

1 factors.

2 So let me just address one more time the
3 jurisdictional argument, which is the main argument that I think
4 plaintiff makes. And again, there is specific jurisdiction over
5 Delta, and the reason why is, as Mr. Hnath says, the inventor is
6 located in California, and Delta interacted with him while he
7 was in California. That simply can't be disputed.

8 THE COURT: What was in California? Tell me about
9 what you say, what happened in California?

10 MR. KAO: The inventor that -- the plaintiff --

11 THE COURT: I'm not asking where the inventor lived,
12 because the inventor could live anywhere. So you're saying an
13 inventor to a patent confers jurisdiction in relation to
14 anything to do with the patent; is that correct? Do you have
15 any case --

16 MR. KAO: That's not what I'm saying, Your Honor. I
17 would say that Delta -- Delta, my client, interacted with Mr. Yi
18 Li, the inventor, the supposed inventor of these patents while
19 he was in California. So therefore as a result --

20 THE COURT: So in this case, depending on what
21 happened in California is what you're saying has nothing to do
22 with China, correct?

23 MR. KAO: No, that's not what I'm saying. There are
24 facts relevant to this case that occurred in China and occurred
25 in Taiwan and in California.

1 THE COURT: Well, what happened in California?

2 MR. KAO: So California was where the claimed inventor
3 from the plaintiff's perspective was located. And the plaintiff
4 is saying that he did none of the work relevant to these patents
5 in California, but that's belied by his representations to the
6 Patent Office. So the U.S. Patent Office, Mr. Yi Li always says
7 that he is based in California. And that's because he's trying
8 to avoid -- if he'd said that he were located in China, they
9 would have bigger problems with their patents. So he has
10 represented to the USPTO that he is located in and worked on
11 these patents in California.

12 THE COURT: Now you're saying he worked on them in
13 California? Is that what you're saying?

14 MR. KAO: Yes. That's what he represented to the U.S.
15 Patent Office.

16 THE COURT: Your evidence where you have the burden of
17 showing the jurisdiction in California -- I haven't figured this
18 case out, because the statute is clear where the case has to be
19 brought. So it can't be brought in California. There's no way
20 on God's earth I figured out how you could bring the case by
21 virtue of the fact that one individual in a company is located
22 in California. The question is, did the defendant do business
23 in California, because you're going after the defendant, not the
24 plaintiff. The question is --

25 MR. KAO: Yes.

1 THE COURT: -- what jurisdiction did the defendant
2 have in California.

3 MR. KAO: Yes. That's correct.

4 THE COURT: So --

5 MR. KAO: The defendant, Delta --

6 THE COURT: Delta has a registered agent in
7 California?

8 MR. KAO: No. Defendant Delta does not have a
9 registered agent in California.

10 THE COURT: All right.

11 MR. KAO: Defendant Delta --

12 THE COURT: Does it do business in California?

13 MR. KAO: Not directly. It does through its U.S.
14 subsidiary.

15 THE COURT: So you're saying that you can get
16 jurisdiction by virtue of a subsidiary?

17 MR. KAO: No, Your Honor. What I'm saying is there is
18 jurisdiction by virtue of Delta's interactions with this
19 supposed inventor in California. And if you look at the cases
20 on inventorship which we have cited in our brief, in particular
21 the Cray (phonetic) decision, there are cases where a defendant
22 interacts with a plaintiff's inventor and there is therefore
23 jurisdiction over that defendant based on where one of the
24 inventors was located and there were interactions.

25 In addition, the parties --

1 THE COURT: The inventor of a patent controls where
2 the patentee is located; is that correct?

3 MR. KAO: To the extent there are interactions between
4 supposed inventors, then yes. If there were interactions with
5 somebody in California --

6 THE COURT: If they met in California or said hello in
7 California that would give you jurisdiction, correct?

8 MR. KAO: If they were talking about issues related to
9 the invention, yes. Not just that they said hello.

10 THE COURT: As long as some talk took place concerning
11 the invention, then wherever that talk took place has
12 jurisdiction, according to you. Is that correct?

13 MR. KAO: Yes, there would be specific jurisdiction in
14 that instance.

15 THE COURT: Interesting point. Well, what if it
16 happens on the telephone?

17 MR. KAO: Well, if the individual's located in
18 California you're still interacting with that person in
19 California.

20 THE COURT: So as long as there was a telephone call
21 from China to California that would confer jurisdiction to whom?

22 MR. KAO: It would confer jurisdiction over the
23 defendant in China, or this case Taiwan, that was communicating
24 with the supposed inventor in California.

25 THE COURT: So the person in Taiwan, if they had a

1 telephone conversation in -- let's remove it to Nevada, for
2 instance. Telephone conversation concerning this patent in
3 Nevada, then Nevada would have jurisdiction, correct?

4 MR. KAO: Correct. They could be sued in Nevada.

5 THE COURT: So if they had a telephone conversation in
6 New York and China, New York would have jurisdiction, correct?

7 MR. KAO: Correct.

8 THE COURT: So any place in the world where they had a
9 telephone conversation there would be jurisdiction?

10 MR. KAO: There would be specific jurisdiction in the
11 inventorship --

12 THE COURT: So the jurisdiction is not limited at all
13 to anything other than the fact that somebody lived there or at
14 some point had a conversation concerning the case there,
15 correct?

16 MR. KAO: Yes. In this context that's correct.

17 THE COURT: Okay. I think I understand your position.
18 Okay. Anything else you want to add? I've read the
19 briefs.

20 MR. KAO: Just one last --

21 THE COURT: Go ahead.

22 MR. KAO: Just one last point on this specific
23 jurisdiction issue. The other reason that I think is relevant
24 which has not been discussed yet is that the parties entered
25 into a contract, an NDA that in the plaintiff's complaint they

1 alleged was breached as part of this process. That contract
2 selects California as the governing law. So clearly as between
3 the parties, they understood that disputes between them would be
4 governed by California law. So that is yet another reason for
5 the case to be transferred to California. The parties'
6 relationship was always going to be governed by California law.

7 THE COURT: You're saying they designated the
8 California courts? Which court did they designate?

9 MR. KAO: No, they did not designate a California
10 court, they selected California law as the choice of law.

11 THE COURT: Oh. So that's interesting. That's
12 interesting. So the choice of what law applies depends on the
13 jurisdiction of the case; is that correct?

14 MR. KAO: I'm not sure I understand that.

15 THE COURT: I love to reduce things to an absurdity.
16 So if they said we're going to apply North Carolina law then the
17 cases would have to go to North Carolina; is that right?

18 MR. KAO: Not necessarily, Your Honor.

19 THE COURT: But you're saying that is the jurisdiction
20 where it should go because they said that particular law would
21 apply? Suppose they said the law of China would apply? Could
22 it be brought in the United States?

23 MR. KAO: No, Your Honor. I'm merely saying that the
24 choice of law in California suggests that the parties in this
25 case wanted California law to apply, and therefore you know that

1 was going to govern their relationship. So it is, it would be
2 reasonable in the interests of justice to transfer this case to
3 California as a result. That is the only --

4 THE COURT: Nothing, as I told you, would give me
5 greater pleasure than to transfer this case to California.
6 Nothing. But I can't figure out a reason to transfer it. So
7 far all you've indicated is that the CEO of one of these
8 companies who claims to be one of the inventors of this matter
9 resides in California. Everyone else resides in Taiwan or
10 China. And that, I just -- if I could figure out a way for this
11 to be there, the statute indicates the only place in the
12 country, in my opinion, that the plaintiff could bring the case
13 is in the Eastern District of Virginia. The statute gives him
14 that authority to do so. And I was trying to figure out if
15 there's any other way to bring it. And I haven't seen that in
16 the case. Haven't shown that anything occurred in California
17 that would cause this case to be brought there. Just couldn't.
18 So I'm having lots of problems with it. As I read through this
19 material I kept trying to figure out how in the world did we get
20 to California? And I don't want to mislead you and I don't want
21 to deny Mr. Hnath the opportunity to answer your argument,
22 because I don't think it's essential. You'll find out in this
23 case that I try to figure out what's the case. And the reason I
24 gave you an opportunity, I thought maybe you could come up with
25 something to convince me to be able to send this case to

1 California. I certainly don't want to sit and try a difficult
2 patent case that goes -- because they are difficult. They are.

3 So unfortunately, we have to go ahead in Virginia.

4 And I like to tell people where I stand. I'm going to write an
5 opinion. I will certainly do that in the next few days. But
6 rather than getting involved any further to mislead someone, I
7 can't find any reason to transfer this case to California. I'm
8 sorry, because I'd love to do it. I really would. We've got
9 enough work here in Virginia. The only problem in Virginia with
10 regards to defendants is that the cases go faster. California,
11 they take a long time. Here in Virginia they take a lot less
12 time. So consequently I want to go ahead and get this case
13 moving, and I don't like to delay decisions. I will delay
14 getting the written opinion out. So I'll get an opinion out.

15 I appreciate the argument. I understand the position
16 that Delta would make in this case. I'm also very aware that
17 Appotronics is the plaintiff and where Appotronics could bring
18 the suit. If it's necessary, I will try to be as convenient as
19 possible to the parties. But we'll see where we stand when we
20 get further along in this case.

21 And so the arguments in this case, I don't know what
22 they will bring us, but wherever we're going, we're going to go
23 along as quickly as possible and get this case off the docket.
24 I appreciate the argument. I thought the briefs were excellent.
25 I just couldn't figure out how to transfer this case. If I

1 could do it, my gracious, I would do it in a minute. We have
2 enough difficult decisions to make. I want to get them moving
3 along.

4 Is there anything else I could do for you at this
5 time, either one of you? Anyone?

6 MR. HNATH: Your Honor, this is Gary Hnath. I think
7 that's it for us. We do have an issue about depositions going
8 forward, and we've had some discussions with Delta's counsel
9 about the possible need to take those remotely in this COVID-19
10 world where depositions are sometimes done by Zoom just like
11 we're doing this hearing this morning by Zoom. So you know,
12 we'll continue that dialogue with Delta's counsel, but I did
13 want to alert you to that one potential issue.

14 THE COURT: Well, I can tell you this: Generally, we
15 try to resolve any difficulties between parties. The parties
16 have to try to resolve any difficulties that pertain to
17 procedural matters between the two of them. I'm going to assure
18 you that this Court will move this case along. We do not delay.
19 I do not delay. I don't care who it is or what it is. We don't
20 delay. I want to emphasize that. Because there's, in many
21 courts, the fact that parties generally agree on a continuance
22 is sufficient. In this court, it isn't. And I just want to
23 warn parties of that factor. Even though you and the other side
24 may agree on it, it's not going to happen as such. So I want to
25 emphasize that. I want to emphasize, we move along quickly. I

1 suggest you move along quickly. I suggest that because
2 litigation is not an end, it's a means. Litigation is to settle
3 problems which individuals or entities may have, it is not to
4 accommodate the legal profession. Unfortunately, things have
5 changed in the years that I have been here. But what hasn't
6 changed is the fact that we move along here. And I want to
7 emphasize it, lest somebody get an idea that things can slow
8 down. They're not slowing down. We're moving forward. We
9 believe that the parties are entitled to answers, not the
10 lawyers. The parties are entitled to settle their dispute, not
11 the lawyers. The lawyers are merely there to guide the
12 individuals in trying to arrive at a solution to whatever may be
13 a problem. And I hope we can provide arrive at it quickly,
14 fairly. And I emphasize it because sometimes the strangers to
15 this court have a different idea. It may be one of the reasons
16 Congress decided to move the jurisdiction from the District of
17 Columbia to the Eastern District of Virginia. So things move
18 along in different ways in different courts, and I just want to
19 emphasize that.

20 Is there anything else I can do at this time in
21 relation to this case? Any information you want? I assure you
22 two things: Here, the docket clerk for this court is Ms.
23 Baxter. She's seated right next to me here in the courtroom,
24 and if you have a problem, I suggest you get to her right away.
25 We'll get a date, we'll move it along and we will move it along.

1 If we have to, we'll deal with it by Zoom. I think it's a very
2 efficient manner in disposing of matters. This is Ms. Baxter.
3 She's very effective. She's the docket clerk. And I'm very
4 available to answer questions. I like to get things over and
5 done with and they don't lag. I try to. It takes some time,
6 often, to get the written opinions out because they're written,
7 and it's not the only case we have in this court. So just so
8 you understand that. So we just don't want to let things lag.
9 I'll just advise you at the beginning, or try to. And I
10 appreciate it. I just wish I could figure out a way to transfer
11 this case, but I couldn't. And I want to make that abundantly
12 clear.

13 Is there anything else at this time? If not --

14 MR. KAO: No. Thank you for your time, Your Honor.

15 MR. HNATH: Thank you, Your Honor.

16 THE COURT: All right. Thank you, very much. It's an
17 interesting matter.

18 MR. KAO: Thank you.

19 THE COURT: We'll recess court at this time.

20 (Whereupon, proceedings concluded at 10:51. a.m.)
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CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript of the proceedings held in the above-entitled matter.

Paul L. McManus, RMR, FCRR

Date